

Circuit Court for Carroll County
Case No. C-06-FM-19-000477

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 941

September Term, 2022

TAMARA L. MILLER

v.

WILLIAM H. MILLER

Wells, C.J.
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: March 7, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On July 19, 2022, the Circuit Court for Carroll County granted an absolute divorce to appellant, Tamara Miller (“Wife”), and appellee, William H. Miller (“Husband”), by entry of a memorandum opinion and written order. In this appeal, Wife raises a number of challenges to the portions of the judgment distributing marital property. Specifically, Wife presents the following issues, which we have consolidated, rephrased and reordered:¹

1. Whether the circuit court erred in calculating Husband’s non-marital interest in the marital home;
2. Whether the circuit court abused its discretion in ordering certain terms of the sales of the marital home and vacation home;
3. Whether the circuit court erred in awarding Husband all net proceeds of the sale of the marital home;
4. Whether the circuit court erred in awarding Husband *Crawford* credits.

¹ Wife phrased the questions as:

1. Did the [c]ourt err in awarding Crawford Credits for payments made from marital funds for Berberi Road?
2. Did the [c]ourt err in using an incorrect formula for determining Appellee’s non-marital ownership for Berberi Road?
3. Did the [c]ourt err in appointing Appellee to sell Berberi Road?
4. Did the [c]ourt err in awarding Appellee 100% of the proceeds to Berberi Road?
5. Did the [c]ourt err in awarding Crawford Credits for payments made from marital funds for Ocean View Lane?
6. Did the [c]ourt err in appointing a real estate agent to sell Ocean View Lane?
7. Did the [c]ourt err in requiring the parties to sell Ocean View Lane for the price recommended by the real estate agent?

For the reasons set forth below, we vacate the award of *Crawford* credits, the order awarding Husband all net proceeds of the sale of the marital home, and the monetary award. We remand to the circuit court for reconsideration of the monetary award consistent with this opinion. We shall otherwise affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married on September 6, 2014, and share two minor children together.² Prior to their marriage, the parties purchased, as joint tenants, an unimproved lot located at 1069 Berberi Road in Westminster (the “Berberi property”). The parties constructed a house on the Berberi property and lived there during their marriage. In 2016, the parties purchased a vacation home on Ocean View Lane in Ocean City, Maryland (the “Ocean View property”).

On May 6, 2019, Husband filed a complaint for limited divorce. Wife counter-complained for limited divorce, and Husband filed an amended complaint for an absolute divorce.

The divorce trial spanned eleven days. Over the course of the trial, the court heard testimony from twenty-five witnesses, including five experts, and admitted approximately 300 exhibits. The parties also submitted a Joint Statement Concerning Marital and Nonmarital Property identifying their assets, pursuant to Maryland Rule 9-207. Due to the complex issues and voluminous evidence, the court took the matter under advisement and ordered the parties to submit written closing arguments.

² Neither party challenges the judgment with respect to custody and child support.

On July 19, 2022, the court issued a fifty-two-page Memorandum Opinion regarding the issues of custody, access, support, divorce, and the division of marital property, and a written judgment reflecting its rulings. The court’s order granted, among other things, the following relief: 1) divorce on grounds of a twelve-month separation; 2) joint physical and legal custody of the children; 3) child support to Wife; 4) a monetary award to Wife in the amount of \$207,948; 5) *Crawford* credits to Husband in the amount of \$66,854.58 in connection with the Berberi property; 6) an order directing the sale of the Berberi property and an award of the sale proceeds to Husband; 7) *Crawford* credits to Husband in the amount of \$155,311.42 for the Ocean View property; 8) an order directing the sale of the Ocean View property and a payment to Husband of \$104,282 from the gross proceeds and payment to Wife of \$224,000 from the gross proceeds, in addition to an equal division of the net remaining proceeds of the sale and payment by Wife to Husband for one half of the mortgage payments paid by him between the date of the divorce and the closing on the sale.

We will include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

Standard of Review

“Pursuant to Maryland Rule 8-131(c) where, as here, an action has been tried without a jury, the appellate court will review the case on both the law and the evidence.” *Friedman v. Hannan*, 412 Md. 328, 335 (2010). We “accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity when conducting divorce

proceedings.” *Boemio v. Boemio*, 414 Md. 118, 124 (2010) (quotation marks and citation omitted). In deciding discretionary matters, “the ‘trial court must exercise its discretion in accordance with correct legal standards.’” *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (quoting *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007) (citation omitted)). We review a trial court’s legal conclusions under a *de novo* standard of review. *Nouri*, 245 Md. App. at 343 (citation omitted).

I.

Calculation of Husband’s Nonmarital Interest in the Berberi Property

Wife contends that the trial court erred in calculating Husband’s non-marital interest in the Berberi property as 71.06% of the gross value. She argued at trial that the proper percentage of Husband’s nonmarital interest was 46.36% of the fair market value. In her brief, Wife asserts that the trial court erred in failing to apply Husband’s nonmarital share to the net equity value, rather than the gross fair market value. Husband contends that the trial court’s calculation of his nonmarital interest in the total fair market value of the Berberi property was not erroneous.

When resolving disputes as to the distribution of marital property, courts must utilize a three-step process. *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019). First, courts must identify which property is marital. Md. Code (2019 Repl. Vol.) § 8-203(a) of the Family Law Article (“FL”); *Abdullahi*, 241 Md. App. at 405. Second, the court must determine the value of the marital property. FL § 8-204(a); *Abdullahi*, at 405. Third, the court may adjust any inequities in the ownership interests of marital property by granting a monetary award to either party. *See* FL § 8-205(a)(1)-(2); *Abdullahi*, at 405-06. In

Maryland, “marital property” is defined as “property, however titled, acquired by 1 or both parties during the marriage.” FL § 8-201(e)(1). Marital property does not include assets “(i) acquired before the marriage; (ii) acquired by inheritance or gift from a third party; (iii) excluded by valid agreement; or (iv) directly traceable to any of these sources.” FL § 8-201(e)(3).

In *Grant v. Zich*, 300 Md. 256, 276, n.9 (1984), the Supreme Court of Maryland set forth the method for calculating nonmarital and marital interests in property, illustrated by the following example:

A husband and wife acquired real property for a purchase price of \$40,000. The wife contributed a down payment of \$10,000 from property that she acquired prior to the marriage. The remaining \$30,000 was financed by a mortgage signed by both the husband and the wife. One-quarter of the value of the property is the wife’s nonmarital property and three-quarters of the value of the property is marital property.

If, at the time of the dissolution of the marriage, the property has appreciated in value to a fair market value of \$60,000 and the mortgage indebtedness has been reduced to \$20,000 by the payment of \$10,000 of marital funds, the following division would be appropriate. One-quarter of the \$60,000 fair market value of the property, or \$15,000, would be the wife’s nonmarital property, not subject to equitable distribution. From the remaining \$45,000, \$20,000 representing the unpaid mortgage balance, would be deducted leaving \$25,000 as the net value of the marital property subject to equitable distribution.

See also Scott v. Scott, 103 Md. App. 500, 516 (1995) (explaining the “*Grant v. Zich*” formula as [Fair Market Value – Nonmarital Property – Unpaid Mortgage Balance] = Net Value subject to equitable distribution).

Based on the evidence Husband presented, the court determined that the parties purchased the Berberi property for \$671,641.49, and that Husband expended a total of

\$477,247.45 in initial acquisition costs.³ Husband therefore acquired a 71.06% nonmarital interest in the home.

The court accepted the parties’ agreement that the Berberi property had a fair market value of \$885,000. The court correctly calculated Husband’s nonmarital share in the Berberi property as 71.06% of the \$885,000 fair market value, leaving a total marital share of 28.94%. Accordingly, the fair market value of the property (\$885,000) was reduced by Husband’s nonmarital share (\$628,881), and the unpaid mortgage balance (\$232,480), resulting in a net marital value of \$23,639 subject to equitable distribution.

We see no error in the trial court’s application of the *Grant v. Zic* formula or its determination that Husband’s nonmarital share of the Berberi home was 71.06% of the property’s fair market value.

II.

Challenges to the Terms of Sale of the Berberi and Ocean View Properties

Wife argues that the trial court abused its discretion in appointing Husband to sell the Berberi property rather than a trustee. She maintains that she is entitled to a remand to determine the financial harm to her caused by Husband “acting in his own self-interest through self-dealing with a [r]ealtor friend and decisions made by [r]ealtor who was within the sole employ of Husband.” She also argues that the trial court abused its discretion in

³ Wife challenged a portion of Husband’s acquisition costs at trial, but, on appeal, she does not challenge the trial court’s factual finding as to those costs.

appointing a real estate agent to sell the Ocean View property, rather than a trustee, and in requiring the parties to sell that property at a price recommended by the real estate agent.

Husband contends that Wife waived these issues by failing to request the appointment of a trustee or a sale in lieu of partition. Husband further asserts that Wife’s challenges to the sales of the Berberi and Ocean View properties are moot because those properties have been sold. We agree with Husband on both points.

An issue is moot if “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.” *Powell v. Md. Dep’t of Health*, 455 Md. 520, 539-40 (2017) (citation and quotation marks omitted). With respect to real property, an issue is moot when the subject property has been sold and the relief requested has “become impossible.” *Silver v. Benson*, 227 Md. 553, 559 (1962). Based on Husband’s representation that the Berberi and Ocean View properties have been sold, Wife’s challenge to the orders regarding the procedures of those sales is moot.

Even if the properties had not yet been sold, we would conclude that these issues were waived. At trial, Wife requested that the court order the parties to engage a mutually agreed upon realtor to list the Berberi property for sale at an initial asking price to be determined by the realtor. Wife did not request that the court appoint a trustee to sell the Berberi property or the Ocean View property. The court explained its reasoning for ordering that Husband select a realtor of his choice for the Berberi property:

Both parties seek sale of this asset. In his rebuttal closing, Husband expresses willingness to have the [c]ourt select a realtor to accomplish the sale on specified terms. The [c]ourt declines to do so and, owing to difficulties in getting listing agreements testified to at trial, will instead [o]rder that

[Husband] shall select a realtor of his choice with sale to occur on terms set forth in the accompanying Order.

Because Wife did not request the appointment of a trustee for the sales of the Berberi and Ocean View properties, her argument that the court erred in failing to order trustee sales for those properties is waived.

III.

Award of Berberi Sale Proceeds to Husband

In its written order, the trial court awarded “all net proceeds” of the sale of the Berberi property to Husband, stating: “In consideration of [Husband’s] non-marital contributions to [the Berberi property] and the Crawford Credits awarded to [Husband,] [Husband] shall retain all net proceeds of [the] sale of [the Berberi property].”

“Maryland courts have no authority to transfer the ownership of personal or real property from one party to the other.” *Prahinski*, 75 Md. App. at 139 (vacating order that attempted to improperly transfer ownership of parties’ joint properties to husband (citing FL § 8-202(a)(3)). In making an equitable distribution of marital property, “the trial judge may either grant a monetary award to adjust the equities of the parties, or, in the case of property owned by both of them, order that the property be sold and the proceeds divided equally.” *Brewer v. Brewer*, 156 Md. App. 77, 114 (2004) (quoting *Pleasant v. Pleasant*, 97 Md. App. 711, 720 (1993)); *see also Ward v. Ward*, 48 Md. App. 307, 311 (1981) (holding that the trial court erroneously awarded wife \$10,000 in lieu of the undivided one-half interest she was entitled in jointly owned property, which the statute “flatly forbids”).

By awarding Husband all net proceeds of the sale of the Berberi property, instead of ordering that the net proceeds of the sale of the property be divided equally between the parties pursuant to the formula provided in Section I of this opinion, the court improperly transferred full ownership of that property to Husband. Accordingly, we vacate the written order awarding Husband all net proceeds of the sale of the Berberi property and remand for entry of an order providing for equal distribution of the net proceeds. Because the trial court presumably relied on the erroneous award of the sale proceeds of the Berberi property to Husband in determining the monetary award to Wife, the monetary award must also be vacated and remanded.

IV.

Award of *Crawford* Credits to Husband

Wife argues that the circuit court erred in awarding Husband *Crawford* credits in the amount of \$222,166 (\$66,854.58 for the Berberi property and \$155,311.42 for the Ocean View property) because Husband used marital funds to pay the expenses for both properties prior to the parties' divorce. Husband contends that the payment of mortgage expenses from marital funds during the parties' separation did not preclude an award of *Crawford* credits, and the trial court's award of *Crawford* credits to him for both properties was not error.

The term "*Crawford* credits" refers to an award of credits or contribution to a spouse for payment of the mortgage, insurance, tax, and other carrying costs for jointly owned property made during the time the parties are separated, up until the divorce. *See Crawford v. Crawford*, 293 Md. 307, 311 (1982) (holding that wife was entitled to deduct payments

she made on the mortgage, taxes, and insurance from the proceeds of the sale of the house before splitting them). “Generally, one co-tenant who pays the mortgage, taxes, and other carry charges of jointly owned property is entitled to contribution from the other[.]” *Id.* at 309.

An award of *Crawford* credits is an equitable remedy within the sound discretion of the trial court. *Turner v. Turner*, 147 Md. App. 350, 407 (2002). “There are many reasons why such an award is not mandatory. For example, debt payments are often made with marital funds, contribution is an equitable principle” and “requiring contribution could create the very inequity which the act was designed to prevent.” *Id.* (quotation marks and citation omitted); *see also Woodson v. Saldana*, 165 Md. App. 480, 493 (2005) (noting that, because an award of *Crawford* credits is discretionary, it is not accurate to say that a spouse who pays the mortgage and other carrying costs that preserve the property is entitled in all cases to receive such credits). Ultimately, “the court must exercise its discretion to determine whether *Crawford* credits are warranted” and “the test involves whether the total disposition is equitable.” *Flanagan v. Flanagan*, 181 Md. App. 492, 541 (2008) (quotation marks and citations omitted).

In *Caccamise v. Caccamise*, 130 Md. App. 505, 525 (2000), this Court set forth four exceptions that often preclude contribution in divorce cases: “(1) ouster, (2) agreements to the contrary; (3) payment from marital property; and (4) an inequitable result.” In that case, however, the source of the funds used to make payments on the parties’ properties during their separation was not the basis of the contribution argument on appeal. We affirmed the trial court’s decision awarding the husband full contribution for payments

made toward the parties’ condominium, but 40% of the payments made on the marital home where husband and daughter lived while the wife obtained other housing, concluding that the trial court “had sufficient evidence before it to make the most efficient determination as to whether the appellant was deserving of contribution, and how much.” *Id.* at 524-25.

This Court has recognized that an award of *Crawford* credits is not required where mortgage payments and related expenses are made from marital funds. *See, e.g., Prahinski v. Prahinski*, 75 Md. App. 113, 141 (1988) (holding that the trial court did not err in denying husband’s request for reimbursement of costs he paid from marital funds to maintain the parties’ rental properties during their separation); *Wassif v. Wassif*, 77 Md. App. 750, 766 (1989) (affirming an award of credits to husband for mortgage payments made during the use and possession period *after* the divorce, but not prior to the divorce); *Broseus v. Broseus*, 82 Md. App. 183, 193-94 (1990) (holding that contribution was not appropriate for mortgage payments made during the marriage that were “admittedly made from marital funds”); *Lemley v. Lemley*, 102 Md. App. 266, 299 (1994) (finding no error in the trial court’s denial of husband’s request for contribution where the parties were married at the time the mortgage payments were made and the payments were made from marital funds).

As to Husband’s request for *Crawford* credits for payments made to maintain the Berberi and Ocean View properties, the court ruled:

It is undisputed that since the parties’ separation in October, 2018, Husband has paid all expenses associated with both [the Berberi property and the Ocean View property]. Evidence at trial demonstrated these expenses including not just the mortgage payments, taxes and insurance but all utilities, upkeep and maintenance at both properties. Indeed, the record was

replete with numerous demands made by Wife that various items in need of repair or bills that were due would be attended to or paid by Husband. Husband does not seek *Crawford* credits for all such expenses, but, rather, seeks such credits for post-separation mortgage expenses for the properties. As of November 1, 2021, these claimed credits total \$222,166 (\$66,854.58 for Berberi Road and \$155,311.42 for Ocean View as set forth on Exhibits C and D to his written closing). Wife disputes that Husband should receive *Crawford* credits for the reasons set forth in her closing. **Upon giving consideration to all evidence, the [c]ourt has determined to grant Husband’s request for Crawford credits accounting from October, 2018 to date of sale of the property and will Order payment of same at time of settlement.**

(Emphasis in original).

It was undisputed at trial that Husband paid all mortgage payments and carrying costs for the Berberi and Ocean View properties from his New Windsor bank account, which the parties agreed was marital property. Indeed, Husband concedes in his brief that all mortgage expenses were paid from marital funds.

It is unclear from court’s ruling whether, in awarding *Crawford* credits to Husband, the court considered that Husband’s payments for the expenses associated with the Berberi and Ocean View properties were made from marital funds. For that reason, we vacate the award of *Crawford* credits to Husband and remand for reconsideration of that award in light of the court’s reconsideration of the monetary award. On remand, the determination of the monetary award remains within the sound discretion of the trial court, consistent with the terms of this opinion.

JUDGMENT AFFIRMED IN PART AND VACATED IN PART. JUDGMENT VACATED WITH RESPECT TO THE AWARD OF CRAWFORD CREDITS, PROCEEDS OF SALE OF BERBERI PROPERTY AND MONETARY AWARD.

**CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID 75%
BY APPELLEE AND 25% BY
APPELLANT.**